

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Appeal No. 15599 of Harry L. Thomas, Jr., on behalf of the Woodridge Civic Association, pursuant to 11 DCMR 3105.1 and 3100.2, from the decision of Edgar T. Nunley, Chief, Zoning Review Branch made on July 31, 1991, to the effect that he allowed Rhema Christian Center to change a foundation permit and application information from an assembly hall to church in an R-1-B and a C-1 District at premises 1825 Michigan Avenue, N.E. (4185, Lot 5).

Appeal No. 15602 of Milton A. Fisher on behalf of the Michigan Park Citizens Association, pursuant to 11 DCMR 3105.1 and 3200.2, from the decision of Joseph F. Bottner, Zoning Administrator, made on August 8, 1991, to the effect that a building permit was issued after the Zoning Review Branch corresponded with the Rhema Christian Center and the application for construction permits on private property was revised for a church and private school in an R-1-B and a C-1 District at premises 1825 Michigan Avenue, N.E. (Square 4185, Lot 5).

HEARING DATE: November 20, 1991
DECISION DATE: December 18, 1991

ORDER

PRELIMINARY PROCEDURAL MATTERS:

Appeal No. 15599 was filed by Harry L. Thomas, Jr. on September 3, 1991. On the date of the hearing, November 20, 1991, the intervenor, Rhema Christian Center (Rhema) filed a motion to dismiss the appeal on the following grounds: (1) The appeal application does not contain the required written letter authorizing Mr. Thomas to represent the Woodridge Civic Association. (2) No filing fee was paid. (3) Mr. Thomas, as a private individual, does not meet any of the exceptions enumerated for waiver of filing fees.

At the public hearing, the Board decided to go forward with the appeal and to give the appellant an opportunity to submit a letter of authorization by December 4, 1991. On December 4, 1991, the Board received a letter from the President of the Woodridge Civic Association dated December 3, 1991, officially authorizing Mr. Thomas to represent the organization on matters involving the appeal.

Appeal No. 15602 was filed by Milton A. Fischer. At the public hearing, the intervenor moved for dismissal of the appeal on grounds essentially the same as those raised in Appeal No. 15599:

(1) The appeal application does not contain written authorization for Mr. Fischer to represent the Michigan Park Citizens Association. (2) No filing fee was paid. (3) Mr. Fischer, as a private individual, does not meet any of the exceptions enumerated for waiver of filing fees.

At the public hearing, the Board decided to hear this appeal along with Appeal No. 15599, and to also give Mr. Fischer an opportunity to submit a letter of authorization to the Board by December 4, 1991.

On December 4, 1991, the Board received a letter dated December 21, 1991 from the secretary of the Michigan Park Citizens Association, authorizing Mr. Fischer to represent the organization in the appeal.

The Board finds that the authorization letters in both appeals are in order. The Board further finds that both organizations are neighborhood civic associations, created for civic purposes, and that they are entitled to a waiver of the normal filing fee for appeals.

Based on these findings the Board concludes that the motions to dismiss have no merit and are hereby **DENIED** by a vote of 4-0 (Sheri M. Pruitt, Paula L. Jewell, and Carrie L. Thornhill to deny; John G. Parsons to deny by proxy; Charles R. Norris not voting, not having heard the case).

SUMMARY OF EVIDENCE:

1. The property which is the subject of these appeals is located at 1825 Michigan Avenue, N.E. (Square 4185, Lot 5). The property is split-zoned R-1-B and C-1. The lot is improved with a church building known as the Rhema Christian Center. There is also a school located on the C-1 portion of the lot.

2. On December 17, 1990, Certificate of Occupancy No. B160180 was issued to Rhema authorizing it to use an existing building as a school for 90 students and seven teachers.

3. On June 5, 1991, the Zoning Review Branch received a building permit application and plans requesting an addition and also alteration and repairs to an existing building. On the permit application, the proposed use was identified as "A, assembly, as well as E, education." The plans were assigned for review in the Zoning Review Branch on June 13, 1991.

On June 5, 1991, a building permit application was submitted in the name of Rhema requesting permission to construct a foundation for the new addition. The Zoning Administrator reviewed

the plans and approved the issuance of a foundation permit. Permit No. B-350531, issued on June 14, 1991, indicated that the building would be used as a "school."

4. Community residents contacted the Zoning Review Branch to express concerns about the proposed school use.

Upon review of the file, the Chief of the Zoning Review Branch, sent a letter dated July 31, 1991, to the Pastor of Rhema, requesting written attestation as to the intended use of the property.

On August 2, 1991, the Chief of the Zoning Review Branch received a letter from the Pastor of Rhema indicating that the new church building to be erected will be used exclusively as a church for worship services and not for school use. Zoning approval was granted on August 2, 1991, and updated on August 8, 1991. Building permit No. B-351646 was issued on August 8, 1991. The proposed use of the building shown on the building permit is that of a church.

5. In Appeal No. 15599, the Woodridge Civic Association (Woodridge) challenged the decision of the Chief of the Zoning Review Branch to the effect that Rhema was allowed to change the foundation permit and the permit application to indicate that the proposed use will be a church, not a school or assembly hall.

6. In Appeal No. 15602, Michigan Park Citizens Association (Michigan Park) challenged the decision of the Zoning Administrator made on December 8, 1991, to issue a building permit after the Zoning Review Branch corresponded with Rhema and after the construction permit application was revised.

7. Appellants maintain that the Zoning Administrator erroneously approved the construction of an addition to be used as a school in an R-1-B District. Appellants also maintain that it was improper for the Zoning Administrator's office to allow Rhema to change the proposed use after the construction permits were issued.

8. The Zoning Administrator testified that when the foundation permit application was referred to him he was of the understanding that the applicant, Rhema, wanted construction to start as soon as possible when school closed for the summer. He stated that he scanned the plans and found the addition to be designed as a church. This addition extended from the existing school building located in the C-1 commercial zone and into the R-1-B residential zone.

Since zoning calculations were not completed, he informed the applicant that a letter of indemnification must be submitted

absolving the D.C. government of any liability in the event of technical modifications or if any changes were required upon final review.

The letter of indemnification was submitted, and Building Permit No. B-350531 was issued on June 14, 1991. This permit authorized construction of the foundation for the new addition to the existing building.

The Zoning Administrator testified that when typing the building permit, the permit clerk indicated the proposed use to be a school. The Zoning Administrator maintains that apparently the permit clerk looked at the application, saw the words "assembly" and "education" and concluded that the proposed use was a school. Consequently, the permit clerk made a typographical error in typing "school" on the foundation permit.

The Zoning Administrator testified that when he reviewed the plans, he saw plans for a church. Appellants maintain that the large number of rooms and the area connecting the addition to the existing building should have suggested to him that the addition would be a school. The Zoning Administrator testified that there were many rooms in the plans, however nothing about the plans led him to believe that the addition was anything besides a church. He stated that many churches have lots of rooms, so this was not unusual.

With regard to the area connecting the addition to the building, the Zoning Administrator testified that prior to signing the plans, a structural engineer within the Technical Review Branch was asked to review the plans to determine if the small connection to the church and school was required. It was determined that interior connections were not a requirement. Therefore the Zoning Administrator concluded that the addition was not to be for a school use.

9. The Zoning Administrator testified that on June 25, 1991, a plumbing permit was issued to do work on a new church. When foundation work began, the Zoning Division received inquiries from the neighbors as to the use of the building. Upon review of the file, the Chief of the Zoning Review Branch, sent a letter dated July 31, 1991, to the Pastor of the Rhema Christian Center, requesting written attestation as to the intended use of the property.

The Zoning Administrator testified that on August 2, 1991, the Chief of the Zoning Review Branch received a letter from the Pastor of the Rhema Chirstian Center indicating that the new church building to be erected will be used exclusively as a church for worship services and not as a school.

The Zoning Administrator stated that upon receipt of the letter dated August 2, 1991, from the Pastor, the Zoning Division then allowed the applicant to clarify the proposed use of the building on the building permit application. Item 16 on the building permit application was modified by the applicant to read "A, assembly, as well as E, education, church." It was also modified by crossing out the words "these can be considered accessory or related uses".

The Zoning Administrator testified that zoning approval was granted on August 2, 1991, and updated on August 8, 1991, resulting in Building Permit No B-351646 being issued on August 8, 1991. This permit authorized the Rhema Christian Center to construct a new addition to the existing building; modify the existing roof eaves overhang; build a mezzanine area within the boundaries of the existing structure; plant trees and other landscaping on the property; and restripe the parking lot. Separate electrical, plumbing, mechanical, and insulation permits are required.

The Zoning Administrator testified that the proposed use of the building as shown on the permit is that of a church. On August 9, 1991, an electrical permit, B-367451, was issued to do work in a church. On August 29, 1991, the D.C. Surveyor made the required wall check, which was subsequently approved by the Zoning Division on September 9, 1991.

10. The Zoning Administrator argued that neither he nor the Chief of the Zoning Review Branch erred in deciding to issue the building permits or in seeking clarification of the intended use from the applicant. He maintains that the only error was the typographical error made by the permit clerk who labelled the intended use as a school. He pointed out that while others may have been confused about the use, he was clear that the plans were for a church.

11. The appellants questioned the Zoning Administrator about what enforcement mechanisms were in place to prohibit Rhema from using the building as a church and a school interchangeably. The Zoning Administrator testified that his office has inspectors who can issue civil infraction citations if the structure is used improperly. With the neighbors' help, the inspectors can monitor the use.

12. Rhema Christian Center appeared as an intervenor in opposition to the appeals. One of Rhema's architects testified that he was responsible for completing the permit application and that he described the proposed use as "A-4 assembly" because this is how the BOCA code describes "church" uses. He stated that all of the documents submitted to DCRA were for a church use. At no time was he informed that the building would be used for a school.

Another architect testified that it is not uncommon to make handwritten corrections to forms at the DCRA.

13. Appellants argued that the church will house too many people for the number of parking spaces that are planned. Appellants disagreed with the Zoning Administrator on the number of seats planned for the facility. Appellants maintain that 158 parking spaces will be inadequate and that more than one space for every ten seats should be required.

14. The Zoning Administrator testified that the Zoning Regulations require churches to provide one parking space for every ten seats. He stated that there will be 1,537 seats in the new facility, requiring 154 parking spaces. For schools, two spaces are required for every three teachers. The Rhema School has seven teachers, requiring four parking spaces, for a total of 158 spaces.

15. Rhema's architect testified that the Zoning Administrator's calculations are correct.

16. Appellants testified that the Zoning Administrator should have reviewed the application for compliance with environmental impact requirements before a permit was issued.

17. The Zoning Administrator testified that environmental impact matters are not within his jurisdiction. He only examines applications for compliance with zoning requirements.

18. Three neighbors testified at the hearing and expressed concerns about the impact that the church use will have on parking in the area.

FINDINGS OF FACT:

Based on the evidence of record, the Board finds as follows:

1. Rhema's application for a foundation permit indicated that the proposed use of the structure would be "A - Assembly, E-Education".

2. Rhema intends to use the structure as a church.

3. The permit clerk misunderstood the intended use and typed in "school" on the foundation permit.

4. The plans reviewed by the Zoning Administrator were those of a church.

5. The Chief of the Zoning Review Branch sought clarification from Rhema as to the proposed use.

6. Changes are often properly made to documents of DCRA.

7. Rhema indicated in a letter that it intended to use the property only as a church.

8. A church is a permitted use in the subject zone districts.

CONCLUSIONS OF LAW AND OPINION:

Based on the foregoing findings of fact and evidence of record the Board concludes that the appellants are challenging the decisions of the Zoning Administrator and the Chief of the Zoning Review Branch to issue a foundation permit for a school to be located in a R-1-B district and to seek clarification from the property owner as to the intended use of the property.

The Board concludes that no error was made by either official. The Board is of the opinion that when the Zoning Administrator reviewed the plans and decided to issue the foundation and building permits, he knew that the proposed use was a church. The Board believes that the permit clerk erroneously assumed that the terms "assembly" and "education" translated into a "school" use of the proposed facility. The Board is of the opinion that if there was any error it was the permit clerk's alone. The Board is further of the opinion that it was proper for the Chief of the Zoning Review Branch to seek clarification from the applicant on the intended use and to make the necessary alterations to the pertinent documents to eliminate any confusion or inconsistencies between the documents and the intended use.

The Board concludes that because this is an appeal, the only issue is whether there was error on the part of the named officials. The Board concludes therefore that the issue of parking is not properly before it.

The Board further concludes that because environmental impact was not before the Zoning Administrator for determination, it is also not a proper issue before the Board.

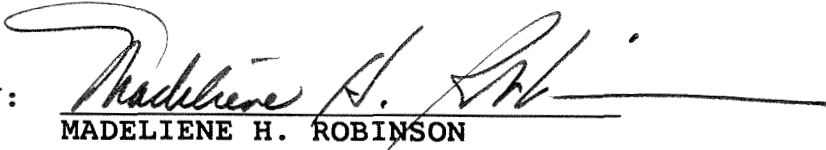
In light of the foregoing analysis the Board concludes that the appeals are hereby **DENIED** and the decisions of the Zoning Administrator and the Chief of the Zoning Review Branch are upheld.

VOTE: 4-0 (Sheri M. Pruitt, Paula L. Jewell and Carrie L. Thornhill to deny; John G. Parsons to deny by proxy; Charles R. Norris not voting, not having heard the case).

BZA APPEAL NOS. 15599 & 15602
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BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

ATTESTED BY:


MADELIENE H. ROBINSON
Director

FINAL DATE OF ORDER:

MAY 26 1993

UNDER 11 DCMR 3103.1, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."

15599Order/bhs

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



BZA APPLICATION NO. 15599

As Director of the Board of Zoning Adjustment, I hereby certify and attest to the fact that on MAY 26 1993 a copy of the order entered on that date in this matter was mailed postage prepaid to each party who appeared and participated in the public hearing concerning this matter, and who is listed below:

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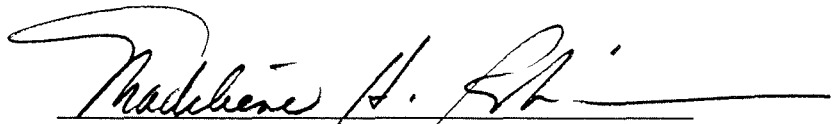
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MADELIENE H. ROBINSON
Director

DATE: MAY 26 1993

15599Att/bhs